

## 2003 DRAFTING REQUEST

### Bill

Received: 12/29/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Louis Molepske (608) 267-9649

By/Representing: Marc

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - victims

Extra Copies:

Submit via email: YES

Requester's email: Rep.Molepske@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Rights of adult children of crime victims

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 01/30/2004	kfollett 02/26/2004					S&L
/1			jfrantze 02/27/2004		sbasford 02/27/2004	lemery 02/27/2004 lemery 02/27/2004	

Labels did not  
print

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

*at intro*  
*3/11*

<END>

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02/27/2004 08:10:02 AM

Page 2

FE Sent For:

**<END>**

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FE Sent For:

&lt;END&gt;



MGD

WISCONSIN STATE REPRESENTATIVE

**Louis J. Molepske, Jr.**

71ST ASSEMBLY DISTRICT

To: Legislative Reference Bureau

From: Marc Christopher, Legislative Assistant to  
Representative Louis J. Molepske Jr.

Re: Drafting of Legislation to Redefine the Term "Children" Under the  
Victim's Bill of rights

Date: December 19, 2003

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Enclosed, please find a letter from the Portage County District Attorney relating to Wisconsin's Victims Rights Laws. Specifically, he states that under the law that adult children are not entitled to the rights under the Victim's Bill of Rights. I believe that Rep. Molepske shares the DA's belief that, when looking at the entire law, this result was intended by the legislature, and that a legislative remedy is the best course of action to rectify this problem. The attached letter and Defendant motion will provide you with some excellent background on the issue.

Rep. Molepske, therefore, is requesting legislation be drafted to remedy this matter. It appears that changing the definition of "victim" to include "adult children," would be the most appropriate remedy. However, I am open to additional suggestions.

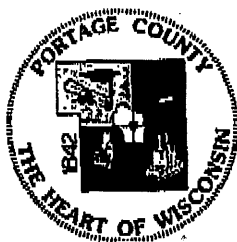
Please feel free to give me a call at 7-9649 at your convenience. Thank you.

HOME:  
924 Lindbergh Ave  
Stevens Point, WI 54481  
(715) 342-8985  
Rep.Molepske@legis.state.wi.us

[www.legis.state.wi.us](http://www.legis.state.wi.us)



STATE CAPITOL:  
P.O. Box 8953  
Madison, WI 53708-8953  
Toll-free: 888-534-0071 or (608)267-9649  
FAX: (608) 282-3671



# PORTAGE COUNTY DISTRICT ATTORNEY

## THOMAS B. EAGON

Assistant District Attorneys  
**KELLY S. BENJAMIN**  
**VERONICA ISHERWOOD**  
**CHARLES J. O'NEILL**

September 20, 2002

Victim-Witness  
**CARRIE DAVIES**

Senator Kevin Shibilski  
P.O. Box 8952  
Madison, WI 53707-8952

Assembly Person Julie Lassa  
P.O. Box 7882  
Madison, WI 53707-7882

Assembly Person Mary Ann Lippert  
P.O. Box 8952  
Madison, WI 53707-8952

RE: Corrective legislation required for Victim Rights Law

Dear Legislators:

I am writing this letter to request corrective legislation be made to Wisconsin's Victim Rights Laws. Specifically, requesting that the term "victim" under 950.02 include the adult children of a deceased.

Under current law, it appears that 950.02(3) "family member" means spouse, child, sibling, parent or legal guardian. Unfortunately child for purposes of Chapter 950.02 is defined under 940.02(1) as a person who is less than 18 years of age.

Therefore, when reading the two definitions together, an adult child is no longer considered a family member of the child's parent and if the parent was the victim of a homicide the adult child does not gain any of the rights enumerated by the Victim Rights legislation because they are not considered a victim by definition.

This of course, is an absurd result of the statute and certainly was never intended when the original legislation was drafted. Nonetheless, the circuit court in a case in

1516 Church Street, Stevens Point, WI 54481-3598 \* Telephone 715/346-1300 \* Fax 715/346-1236

which I was recently involved in, reluctantly came to the conclusion that the adult children of the deceased victim were not entitled to the rights under the Victim's Bill of Rights including restitution.

To give you context, the case involved a victim who was killed by a drunk driver leaving behind two adult daughters. After a jury trial the defendant was convicted and the court ordered restitution for lost wages to the daughters in accordance with the Victim's Bill of Rights under 950.04(lv)(q) and 973.20, Wis. Stats. The defendant objected, arguing that since the Victim Rights Law defines a child as a person less than 18 years of age; and a family member as a spouse, child, sibling, parent or legal guardian; and a victim as a family member of the deceased, the adult children were excluded from having the right to restitution. The court agreed, simply because the statutory language was <sup>not</sup> ambiguous and not open to interpretation to add adult children into the definition. The absurdity, of course, is that a sibling or parent of the deceased would be entitled to restitution but not the adult children. (In this case there was no spouse). To make the matters worse, the court's interpretation also means that the adult children had none of the other basic rights enumerated under the statute, such as the right to attend proceedings in the case, the right to notification of hearings or court proceedings, the right to consult with district attorneys in the case and the right to make a statement or have the preparer of the presentence investigation make a reasonable attempt to contact them, even though they were the only natural heirs of the crime victim.

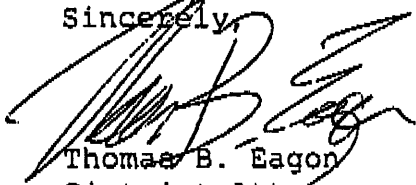
This absurd result can only be remedied by legislative action which on it's face would seem to require simply adding adult children under the definition of family member as a possible solution. A more complete solution may be to change the definition of child to a definition for a "minor child" and then making the appropriate statutory changes to those parts of Chapter 950 where the specific intent was to address the needs of a "minor child" (see for example, 950.055).

I would urge quick and expedient action on this legislation as the current situation is incredibly frustrating and demoralizing to adult children of crime victims who feel they don't count.



Thank you for your attention to this matter. If you have any questions feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. B. Eagon', written over the printed name.

Thomas B. Eagon  
District Attorney  
Portage County

TBE:dkg

**Eagon, Thomas**

---

**From:** Eagon, Thomas

**Sent:** Tuesday, September 24, 2002 2:31 PM

**To:** Zupan, Kathleen J.

**Subject:** Corrected attachment

Kathy,

After sending you the letter attachment to my earlier email regarding Victim Rights Law, I noticed a typo on paragraph 2 page 2 where the word ambiguous should be unambiguous. It really only makes a difference to us legal types. But if you have an attorney look at the original it might not make sense.

Sorry for the mix-up.

Tom

9/24/2002

**Eagon, Thomas**

---

**From:** Eagon, Thomas  
**Sent:** Tuesday, September 24, 2002 9:03 AM  
**To:** Zupan, Kathleen J.  
**Subject:** Victim Rights Law  
Hi Kathy,

Hope this email finds you well.

Attached is a copy of a letter I sent my legislators regarding a difficulty I had in a recent case where the adult children of an OWI homicide victim were denied restitution as they were excluded by definition under the Victim Rights Law. You may recall this issue as we raised it with you when it originally came up.

In the letter I describe the problem as follows:

Under current law, it appears that 950.02(3) "family member" means spouse, child, sibling, parent or legal guardian. Unfortunately child for purposes of Chapter 950.02 is defined under 940.02(1) as a person who is less than 18 years of age.

Therefore, *[the court reasoned]* when reading the two definitions together, an adult child is no longer considered a family member of the child's parent and if the parent was the victim of a homicide the adult child does not gain any of the rights enumerated by the Victim Rights legislation because they are not considered a victim by definition.

This of course, is an absurd result of the statute and certainly was never intended when the original legislation was drafted.

I had intended to copy you on the letter when sent.

Tom

Thomas B. Eagon  
Portage County District Attorney  
1516 Church St.  
Stevens Point, WI 54481  
Phone: (715)346-1300 Fax: (715)346-1236  
Eagon.Thomas@mail.da.state.wi.us

9/24/2002

**Eagon, Thomas**

---

**From:** Eagon, Thomas  
**Sent:** Tuesday, September 24, 2002 2:26 PM  
**To:** Kursevski, Dan  
**Subject:** Corrective legislation required for Crime Victim Rights Law

Hi Dan,

Good talking to you. Attached is the letter I referred to. Apparently my original letter did not get sent out. Since it was no longer in the computer my secretary had to retype it. In doing so the word unambiguous in paragraph 2 page 2 got changed to ambiguous. I have corrected it in the attachment.

In a nutshell, I had in a recent case where the adult children of an OWI homicide victim were denied restitution as they were excluded by definition under the Victim Rights Law.

In the letter I describe the problem as follows:

Under current law, it appears that 950.02(3) "family member" means spouse, child, sibling, parent or legal guardian. Unfortunately child for purposes of Chapter 950.02 is defined under 940.02(1) as a person who is less than 18 years of age.

Therefore, *[the court reasoned]* when reading the two definitions together, an adult child is no longer considered a family member of the child's parent and if the parent was the victim of a homicide the adult child does not gain any of the rights enumerated by the Victim Rights legislation because they are not considered a victim by definition.

This of course, is an absurd result of the statute and certainly was never intended when the original legislation was drafted.

Any remedial legislation Julie could propose would be appreciated especially by the two daughters involved.

Thanks again,

Tom

P.S. For staffing purposes, the judge involved was from Wood County.

Thomas B. Eagon  
Portage County District Attorney  
1516 Church St.  
Stevens Point, WI 54481  
Phone: (715)346-1300 Fax: (715)346-1236  
Eagon.Thomas@mail.da.state.wi.us

9/24/2002

1  
CFE 196  
TResponse by June 31  
Reply due within 10 days

(file)

STATE OF WISCONSIN      CIRCUIT COURT      PORTAGE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 00-CF-162

CHRIS ZBLEWSKI,

Defendant.

DEFENDANT'S MOTION TO MODIFY RESTITUTION ORDER

Pursuant to Wis. Stat. § 974.02 and (Rule) § 809.30(2)(h), the defendant hereby moves the court to modify its restitution order by deleting the requirement that the defendant compensate the victim's daughter and son-in-law for the wages they lost by attending the defendant's trial. In support of this motion the defendant asserts the following:

1. The defendant was convicted of homicide by intoxicated use of a motor vehicle, in connection with an accident that caused the death of Kathleen McDougal. The court sentenced the defendant to 16 years in prison, which included ten years of prison confinement and six years of extended supervision.

2. At sentencing, the state requested restitution in the amount of \$2635.82. This amount included \$1894 in funeral expenses, as well as "restitution to Ms. Bohm [the victim's daughter] as victim of this offense for the time she had to take off without pay for the trial, \$300.22; and the time Michelle Koshollek's husband [the victim's son-in-law] had to take off without pay to attend hearings on this in the amount of \$441.60." Sentencing transcript at 26.

1  
mon: fal Property of Loss to daughter

3. The court accepted the state's request, ordering Zblewski to pay "restitution for the funeral expenses and the costs to the family of \$2635.82." *Id.* at 37.

4. The court lacked the authority to order restitution to the victim's daughter and son-in-law. Under Wis. Stat. § 973.20(1r), a sentencing court must order a defendant "to make full or partial restitution under this section to any victim of a crime considered at sentencing, or if the victim is deceased, to his or her estate." Neither the daughter nor the son-in-law was a "victim" of this crime. Although "victim" is not defined in § 973.20, the court of appeals has recently held that the term must reasonably be interpreted using the definition in Wis. Stat. § 950.02(4). *State v. Gribble*, 2001 WI App 227, 248 Wis. 2d 409, 459-60, 636 N.W.2d 488. That definition provides;

(4) (a) "Victim" means any of the following:

1. A person against whom a crime is committed.
2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.
3. If the person specified in subd. 1 is physically or emotionally unable to exercise the rights granted under s. 950.04 or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. 1. or a family member of the person specified in subd. 1.
4. If a person specified in subd. 1 is deceased, any of the following:
  - a. A family member of the person who is deceased.
  - b. A person who resided with the person who is deceased.
5. If a person specified in subd. 1. Has been determined to be incompetent under ch. 880, the guardian of the person appointed under ch. 880.

Neither the daughter nor the son-in-law is a "family member" under this section. Wis. Stat. § 950.02(3) defines "family member" as "spouse, child, sibling, parent or legal guardian." The victim's daughter is not a "child" under this

section, because § 950.02(1) defines "child" as a "person who is less than 18 years of age."

5. No other provision of the restitution statute permits the court to order the defendant to compensate the victim's daughter and son-in-law for their lost wages resulting from their attendance at the court proceedings in this case. Wis. Stat. § 973.20(4) specifies, "If the crime considered at sentencing resulted in death, the restitution order may also require that the defendant pay an amount equal to the cost of necessary funeral and related services under s. 895.04(5)." The lost wages of the victim's relatives are not "related services" under this section. Wis. Stat. § 973.20(5)(b) also permits the court to order the defendant to "pay an amount equal to the income lost, and reasonable out-of-pocket expenses incurred, by the person against whom a crime considered at sentencing was committed resulting from the filing of charges or cooperating in the investigation and prosecution of the crime." Once again, the daughter and son-in-law were not "the person against whom the crime considered at sentencing was committed."

6. Because the court lacked the authority to order restitution to the daughter and son-in-law, the restitution order must be modified to cover only the funeral expenses, which totaled \$1894.

Dated this 11th day of March, 2002.



STEVEN D. PHILLIPS  
Assistant State Public Defender  
State Bar No. 1017964

Office of the State Public Defender  
Post Office Box 7862  
Madison, WI 53707-7862  
(608) 266-8748

Attorney for Defendant

STATE OF WISCONSIN

CIRCUIT COURT

PORTAGE COUNTY

---

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 00-CF-162

CHRIS ZBLEWSKI,

Defendant.

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DEFENDANT'S BRIEF IN SUPPORT OF HIS MOTION TO MODIFY THE  
RESTITUTION ORDER

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Chris Zblewski has moved the court to reduce its restitution order by \$741.82. Zblewski contends that the court lacked the authority to require him to compensate the victim's daughter and son-in-law for the wages they lost while attending the court proceedings in this case.

The court's authority to impose restitution is derived from Wis. Stat. § 973.20. *State v. Schmaling*, 198 Wis. 2d 756, 760, 543 N.W.2d 555 (Ct. App. 1995). Whether that statute authorizes the restitution that Zblewski challenges here is a question of statutory construction. Zblewski contends that the court's restitution order violates § 973.20, because the victim's daughter and son-in-law are not "family members" of the deceased, and because the wages they lost as a result of attending court proceedings in this case are not compensable losses.



**I. THE ADULT DAUGHTER AND SON-IN-LAW OF THE DECEASED ARE NOT VICTIMS OF THIS OFFENSE BECAUSE THEY ARE NOT "FAMILY MEMBERS" OF THE DECEASED, AS THAT TERM HAS BEEN DEFINED BY THE LEGISLATURE AND CONSTRUED BY THE COURT OF APPEALS.**

With certain exceptions not applicable here, the statute permits the court to require restitution to be paid only to the "victim of a crime considered at sentencing." The term "victim" is not defined in § 973.20. The parties agree, however, that the term's meaning is provided by Wis. Stat. § 950.02(4)(a). *See, State v. Gribble*, 2001 WI App 227, 248 Wis. 2d 409, 459-60, 636 N.W.2d 488.

Where, as here, the person against whom a crime is committed is deceased, that person's "family member[s]" are considered "victims" of the offense. Wis. Stat. § 950.04(a)4.a. Thus, the first question in this case is whether Kathleen McDowell's adult daughter and son-in-law are "family members" under the statute.

**A. The adult daughter of the deceased is not a "family member."**

The term "family member" is defined by Wis. Stat. § 950.02(3) as "spouse, child, sibling, parent or legal guardian." The state argues that McDowell's daughter, Teresa Bohm, is McDowell's "child," and thus, a family member. However, when used in Chapter 950, the word "child" means "a person who is less than 18 years of age." Wis. Stat. § 950.02(1). Bohm is an adult, and thus, not McDowell's "child" under this provision. As the state concedes at page 5 of its brief, "Admittedly the statute on its face appears to exclude adult children of deceased victims from the benefits of Chapter 950."

The state essentially urges the court to ignore the statutory definition, because it produces a result which, in the state's view, is contrary to legislative intent and "absurd." The state's argument violates several cardinal rules of statutory construction.

First, statutory construction begins with the statute's plain language. When the statutory language clearly and unambiguously sets forth the legislative intent, a court may not look beyond that language to determine its meaning. *State v. Black*, 2001 WI 31, ¶10, 242 Wis. 2d 126, 136, 624 N.W.2d 363.

Second, as the Supreme Court stated in *State ex rel. Girouard v. Circuit Court for Jackson County*, 155 Wis. 2d 148, 156, 454 N.W.2d 792 (1990):

When a word used in a statute is defined in the statutes, that definition is controlling. ... Resort to definitions, statutory or dictionary, is appropriate for the purpose of determining meaning that is plain on the face of the statute. It is not necessary or appropriate to find ambiguity before looking to word definitions.

These two principles combine to prevent the court from resorting to legislative history to interpret the meaning of "family member" or "child." Both terms are clearly defined in the statute itself. If the legislature had intended the term "family member" to include one's *adult* children, it would not have defined "child" as it did, or in the alternative, would have either substituted a more expansive word for "child" in § 950.04(a)4.a, such as "offspring" or "progeny," or modified "child" so as to expressly include one's minor *and* adult children. The legislature having failed to adopt any of these alternatives, this court cannot rewrite the statute for the legislature.

If the court simply ignored the statutory definition of "child," as the state urges it to do, it would violate another rule of statutory construction. "Courts must also attempt to give effect to every word of a statute, so as not to render any portion of the statute superfluous." *County of Jefferson v. Renz*, 231 Wis. 2d 293, 305, 603 N.W.2d 541 (1999). The state's construction of this statute renders the definition of "child" a nullity.

The state argues that the construction advanced by Zblewski produces an absurd result. However, it is not "absurd" that the legislature chose to afford greater protection to the *minor* children of deceased victims. After all, it is those

children who customarily depend on their parents for their support and welfare. Accordingly, it is those children who suffer the most when a parent is deceased.

Zblewski concedes that it would not have been unreasonable for the legislature to have provided that *all* of one's children are "family members" for purposes of determining the rights of victims under Chapter 950. But it simply did not do so. Obviously, the legislature has yet to enact every reasonable provision that can be imagined. The failure to enact what might have been a reasonable provision does not render the provision actually enacted "absurd."

The state notes that the 1997 changes to Chapter 950 expanded the definition of "victim" to include more than just the person against whom the crime had been committed. However, that does not mean that courts should *further* expand the legislature's definition to cover every relative potentially or conceivably harmed by the victim's death. *See, Gribble*, 248 Wis. 2d at 462 ("family member" in § 950.02(3) cannot be construed to include the aunt of the deceased).

Finally, the state argues that Zblewski's interpretation of this statute would "frustrate ...society's moral duty to the adult child and impede efforts to treat these victims of crime with dignity, respect, courtesy and sensitivity." To the contrary, society does not have a "moral duty" to insure that adult children of crime victims are compensated for their lost wages in attending court proceedings relating to their deceased parents, nor is there any reason to believe that if such compensation is denied, these children will have been deprived of "dignity, respect, courtesy and sensitivity."

If the state believes these statutory definitions to be unreasonably underinclusive, then it should utilize the ordinary legislative process to persuade the legislature to change these provisions. This court should not enable the state to short-circuit that process by rewriting the statute.

**B. The son-in-law of the deceased is not a "family member."**

The court ordered Zblewski to pay restitution to Michelle Koshollek's husband. Michelle Koshollek is another adult child of the deceased. The state argues that the restitution order was appropriate because a spouse's income is marital property, giving Ms. Koshollek an interest in that income.

The state's argument is misplaced. Whether restitution is statutorily authorized depends on the relationship between the intended recipient and the deceased, not on the classification of the property. The marital property laws do not change the fact that the payment was to be made to Mr. Koshollek, and that Mr. Koshollek was the son-in-law of the deceased. Regardless of whether income is marital property, a son-in-law is clearly not a "family member" under § 950.02(3). Once again, the legislature could have chosen to expand the definition of that term to include the spouse of one who otherwise qualifies as a "family member," but it did not do so. This court is bound by the plain language of the statute.

**II. EVEN IF THE DAUGHTER AND SON-IN-LAW ARE "FAMILY MEMBERS" ENTITLED TO RECOVER RESTITUTION, THEY ARE NOT ENTITLED TO BE COMPENSATED FOR THE WAGES THEY LOST WHILE ATTENDING COURT PROCEEDINGS IN THIS CASE.**

Aside from the fact that Ms. Bohm and Mr. Koshollek do not qualify to receive restitution payments, the "loss" they suffered is not compensable through restitution. Zblewski made this contention in paragraph 5 of his motion. The state has not responded in any fashion to this contention. Zblewski will therefore briefly reiterate this argument.

A court is not authorized to order restitution for every conceivable loss resulting from the commission of a crime. The legislature has enumerated the compensable losses in § 973.20. *E.g.*, § 973.20(2) covers losses resulting from the

damage or destruction of property. Subsec. (3) covers losses resulting from bodily injury. Subsec. (4) covers losses from crimes that resulted in death. Subsec. (4m) covers losses suffered by victims of sexual assault and certain crimes against children. Subsec. (5) covers various other losses and damages.

It is readily apparent that few of these provisions are applicable to this case. The only provisions that conceivably apply are subsec. (4), subsec. (5)(a), and subsec. (5)(b).

The first provision, § 973.20(4), reads, "If the crime considered at sentencing resulted in death, the restitution order may also require that the defendant pay an amount equal to the cost of necessary funeral and related services under s. 895.04(5)." Zblewski does not challenge the requirement that he pay the victim's funeral expenses. However, the lost wages of the victim's daughter and son-in-law resulting from their attendance at court proceedings are not "related services under s. 895.04(5)." That section deals with services related to the funeral, including medical expenses, the cemetery lot, the grave marker and the care of the lot.

The second provision, § 973.20(5)(a), authorizes the court to order a defendant to "Pay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing." The lost wages of the daughter and son-in-law do not qualify as "special damages" that could be recovered in a civil action against Zblewski.

Finally, subsec. (5)(b) authorizes the court to order the defendant to "Pay an amount equal to the income lost, and reasonable out-of-pocket expenses incurred, by the person against whom a crime considered at sentencing was committed resulting from the filing of charges or cooperating in the investigation and prosecution of the crime." The phrase "person against whom a crime considered at sentencing was committed" has a more narrow meaning than the one assigned to

— C

"victim" in Chapter 950.<sup>1</sup> It covers Kathleen McDowell, but not her surviving family members. Moreover, these persons' lost wages did not result "from the filing of charges or cooperating in the investigation and prosecution of the crime." Neither Ms. Bohm nor Mr. Koshollek appears to have been involved in the investigation of the crime or the filing of charges, and neither testified at Zblewski's trial. The lost wages simply resulted from their desire to observe the court proceedings. That desire may be understandable, but that does not make their loss compensable under the restitution statute.

For all these reasons, Chris Zblewski urges the court to reduce the restitution order to \$1894, the cover only the cost of the funeral expenses.

Dated this 24th day of June, 2002

Respectfully submitted,



STEVEN D. PHILLIPS  
Assistant State Public Defender  
State Bar No. 1017964

Office of the State Public Defender  
Post Office Box 7862  
Madison, WI 53707-7862  
(608) 266-8748

Attorney for Defendant

See 471  
Victim n 973.20(1)  
Includes ~~Family~~  
Victim

Under  
Victim Rts  
Statute

923.20(5)(b)

merely enumerates  
a type of Rest. for

Victim ~~def.~~ is entitled to

A victim ~~attorney~~ <sup>assault</sup> himself to a Rts to  
attend or make ~~Stakeholder~~ <sup>Stakeholder</sup> Total  
Should be entitled to lost wages.

<sup>1</sup> "A person against whom a crime has been committed" is but one of many alternative definitions of "victim" recognized by § 950.02(4)(a).

5635 99-00 Wis Stats

## RIGHTS OF VICTIMS AND WITNESSES OF CRIME 950.04

Last page

Rt. to Restitution under 973.20  
see 973.20(5)(b)CHAPTER 950 Agree to Ct what Rts daughters of Victim  
would be denied bcz they are Adult TCab  
SD own Ltr before 950.04  
highlight regions  
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## RIGHTS OF VICTIMS AND WITNESSES OF CRIME

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**950.01 Legislative Intent.** In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.

History: 1979 c. 219.

**950.02 Definitions.** In this chapter:

(1) "Child" means a person who is less than 18 years of age.

(1m) "Crime" means an act committed in this state which, if committed by a competent adult, would constitute a crime, as defined in s. 939.12.

(1t) "Custodial agency" means any person authorized to arrest or take into actual physical custody an individual who is alleged to have committed a crime. "Custodial agency" includes a law enforcement agency, a sheriff, superintendent or other keeper of a jail and a person authorized to take custody of a juvenile under s. 938.19 or 938.20 (4).

(2) "Department" means the department of justice.

(2m) "District attorney" means any of the following:

(a) The district attorney or other person authorized to prosecute a criminal case or a delinquency proceeding under ch. 938.

(b) A person designated by a person specified in par. (a) to perform the district attorney's duties under this chapter.

(3) "Family member" means spouse, child, sibling, parent or legal guardian.

(3m) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(4) (a) "Victim" means any of the following:

1. A person against whom a crime has been committed.

2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.

3. If a person specified in subd. 1. is physically or emotionally unable to exercise the rights granted under s. 950.04 or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. 1. or a family member of the person specified in subd. 1.

4. If a person specified in subd. 1. is deceased, any of the following:

a. A family member of the person who is deceased.

b. A person who resided with the person who is deceased.

5. If a person specified in subd. 1. has been determined to be incompetent under ch. 880, the guardian of the person appointed under ch. 880.

(b) "Victim" does not include the person charged with or alleged to have committed the crime.

(4m) "Victim and witness office" means an organization or program that provides services for which the county receives reimbursement under this chapter.

(5) "Witness" means any person who has been or is expected to be summoned to testify for the prosecution, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

History: 1979 c. 219; 1983 a. 197; 1985 a. 311; 1995 a. 77, 310; 1997 a. 35, 181; 1999 a. 32.

**950.03 Eligibility of victims.** A victim has the rights and is eligible for the services under this chapter only if the crime has been reported to law enforcement authorities.

History: 1979 c. 219; 1991 a. 159.

**950.04 Basic bill of rights for victims and witnesses.**

(1v) RIGHTS OF VICTIMS. Victims of crimes have the following rights:

(a) To have his or her interest considered when the court is deciding whether to grant a continuance in the case, as provided under ss. 938.315 (2) and 971.10 (3) (b) 3.

(b) To attend court proceedings in the case, subject to ss. 906.15 and 938.299 (1). The court may require the victim to exercise his or her right under this paragraph using telephone or live audiovisual means, if available, if the victim is under arrest, incarcerated, imprisoned or otherwise detained by any law enforcement agency or is admitted or committed on an inpatient basis to a treatment facility under ch. 51, 971 or 980, and the victim does not have a person specified in s. 950.02 (4) (a) 3. to exercise the victim's right under this paragraph.

(bm) To be provided with appropriate intercession services to ensure that employers of victims will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

(c) To be accompanied by a service representative, as provided under s. 895.73.

(d) To request an order for, and to be given the results of, testing to determine the presence of a communicable disease, as provided under ss. 938.296 or 968.38.

(e) To be provided a waiting area under ss. 938.2965 and 967.10.

(em) To have his or her interests considered by the court in determining whether to exclude persons from a preliminary hearing, as provided under s. 970.03 (4).

(f) To have the parole commission make a reasonable attempt to notify the victim of applications for parole, as provided under s. 304.06 (1).

(g) To have reasonable attempts made to notify the victim of hearings or court proceedings, as provided under ss. 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

(i) To have, at his or her request, the opportunity to consult with intake workers, district attorneys and corporation counsel in cases under ch. 938, as provided under ss. 938.245 (1m), 938.265 and 938.32 (1) (am).

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(j) To have, at his or her request, the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction, as provided under s. 971.095 (2).

(k) To a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

(L) To have the district attorney or corporation counsel, whichever is applicable, make a reasonable attempt to contact the victim concerning the victim's right to make a statement, as provided under ss. 938.32 (1) (b) 2., 938.335 (3m) (b) and 972.14 (3) (b).

(m) To provide statements concerning sentencing, disposition or parole, as provided under ss. 304.06 (1) (e), 938.32 (1) (b) 1., 938.335 (3m) (a) and 972.14 (3) (a).

(n) To have direct input in the parole decision-making process, as provided by the rules promulgated under s. 304.06 (1) (em).

(nn) To attend parole interviews or hearings and make statements as provided under s. 304.06 (1) (eg).

(o) To have information concerning the impact of a delinquent act on the victim included in a court report under s. 938.33 and to have the person preparing the court report attempt to contact the victim, as provided under s. 938.331.

(p) To have the person preparing a presentence investigation under s. 972.15 make a reasonable attempt to contact the victim, as provided in s. 972.15 (2m).

(pm) To have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court.

(q) To restitution, as provided under ss. 938.245 (2) (a) 5., 938.32 (1t), 938.34 (5), 938.345, 943.212, 943.23 (6), 943.245, 943.51 and 973.20.

(r) To a judgment for unpaid restitution, as provided under ss. 895.035 (2m) and 973.09 (3) (b).

(rm) To compensation, as provided under ch. 949.

(s) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.

(t) To receive information from law enforcement agencies, as provided under s. 950.08 (2g).

(u) To receive information from district attorneys, as provided under s. 950.08 (2r).

(um) To have district attorneys make a reasonable attempt to notify the victim under s. 971.17 (4m) regarding conditional releases under s. 971.17.

(v) To have the department of corrections make a reasonable attempt to notify the victim under s. 301.046 (4) regarding community residential confinements, under s. 301.048 (4m) regarding participation in the intensive sanctions program, under s. 301.38 regarding escapes from a Type I prison, under s. 301.46 (3) regarding persons registered under s. 301.45, under s. 302.115 regarding release upon expiration of certain sentences, under s. 304.063 regarding extended supervision and parole releases, and under s. 938.51 regarding release or escape of a juvenile from correctional custody.

(vm) To have the appropriate clerk of court send the victim a copy of an inmate's petition for extended supervision and notification of the hearing on that petition under s. 302.114 (6).

(w) To have the department of corrections make a reasonable attempt to notify the victim under s. 303.068 (4m) regarding leave granted to qualified inmates under 303.068.

(x) To have the department of health and family services make a reasonable attempt to notify the victim under s. 971.17 (6m) regarding termination or discharge under s. 971.17 and under s. 51.37 (10) regarding home visits under s. 51.37 (10).

(xm) To have the department of health and family services make a reasonable attempt to notify the victim under s. 980.11 regarding supervised release under s. 980.08 and discharge under s. 980.09 or 980.10.

(y) To have reasonable attempts made to notify the victim concerning actions taken in a juvenile proceeding, as provided under ss. 938.24 (5m), 938.25 (2m), 938.312 and 938.346.

(ym) To have the governor make a reasonable attempt to notify the victim of a pardon application, as provided under s. 304.09 (2) and (3).

(z) To make a written statement concerning pardon applications, as provided under s. 304.10 (2).

(zm) To request information from a district attorney concerning the disposition of a case involving a crime of which he or she was a victim, as provided under s. 971.095 (6).

(zx) To complain to the department of justice concerning the treatment of crime victims, as provided under s. 950.08 (3), and to request review by the crime victims rights board of the complaint, as provided under s. 950.09 (2).

(2w) **RIGHTS OF WITNESSES.** Witnesses of crimes have the following rights:

(a) To request information from the district attorney about the final disposition of the case.

(b) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court.

(c) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available.

(d) To be informed of financial assistance and other social services available as a result of being a witness of a crime, including information on how to apply for the assistance and services.

(e) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled.

(f) To be provided a waiting area under ss. 938.2965 and 967.10.

(fm) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.

(g) To be provided with appropriate intercession services to ensure that employers of witnesses will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

(h) To be entitled to a speedy disposition of the case in which they are involved as a witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

History: 1979 c. 219; 1983 a. 102, 364; 1985 a. 311; 1987 a. 332 s. 64; 1989 a. 31; 1997 a. 181, 237, 283; 1999 a. 9, 32, 188.

A sentencing court does not abuse its discretion by considering a victim's statements and recommendations. *State v. Johnson*, 158 Wis. 2d 458, 463 N.W.2d 352 (Ct. App. 1990).

The requirement in sub. (1) of notice to a victim of a defendant's release from custody applies to all felonies charged under ch. 948. Notice is to be given to victims of all crimes charged under ch. 940, whether misdemeanors or felonies. Notice requirements of the statute apply to individual persons, not business enterprises or corporations. 79 Att'y. Gen. 1.

**950.055 Child victims and witnesses; rights and services.** (1) **LEGISLATIVE INTENT.** The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults. The legislature intends, in this section, to provide these children with additional rights and protections during their involvement with the criminal justice or juvenile justice system. The legislature urges the news media to use restraint in revealing



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to the date of the filing of the juvenile petition. *State v. Baker*, 179 Wis. 2d 654, 508 N.W.2d 40 (Ct. App. 1993).

The definition of "custody" in s. 946.42(1)(a) is used to determine whether a person is in custody for sentence credit purposes. *State v. Sevelin*, 204 Wis. 2d 127, 554 N.W.2d 521 (Ct. App. 1996).

A person confined on a probation revocation or change in intensive sanctions due to an arrest for a subsequent crime is not entitled to credit under sub. (1) against the sentence for the subsequent crime although the confinement was triggered by the subsequent crime. *State v. Abbott*, 207 Wis. 2d 621, 558 N.W.2d 927 (Ct. App. 1996).

Sub. (1)(a) provides sentence credit only for custody connected to the charges to which the custody resulted from. Time served as the result of a bail jumping charge was not credited against a sentence for sexual assault although the bail condition violated was in the sexual assault case. *State v. Beiersdorf*, 208 Wis. 2d 492, 561 N.W.2d 749 (Ct. App. 1997).

When a defendant is unable to satisfy cash-bail requirements on 2 or more unrelated charges, the defendant is entitled to sentence credit on both charges. However if the defendant is committed following a finding of not guilty by reason of mental defect on one charge, there will be no sentence credit from the commitment against a sentence upon conviction on another of the charges as the confinement after the commitment is solely the result of the commitment. *State v. Harr*, 211 Wis. 2d 584, 568 N.W.2d 307 (Ct. App. 1997).

An 18-year old on juvenile aftercare parole who was returned to juvenile detention because the parole was revoked pending sentencing after pleading guilty to an adult crime was eligible for sentence credit for the time spent in juvenile detention prior to sentencing. *State v. Thompson*, 225 Wis. 2d 578, 593 N.W.2d 875 (Ct. App. 1999).

When a sentence has been withheld and probation imposed, sub. (2) gives the court exclusive authority to determine sentence credit in imposing a postprobation sentence. A person subject to electronic monitoring, but not locked in the home at night, was not in custody and not entitled to sentence credit. *State v. Olson*, 226 Wis. 2d 457, 595 N.W.2d 460 (Ct. App. 1999).

"(C)ourse of conduct" in sub. (1)(a) means the specific act for which the defendant is sentenced. As such a defendant was not entitled to sentence credit on a later imposed sentence for time already served on sentences arising from the same criminal episode, but different criminal acts. *State v. Tvescher*, 226 Wis. 2d 465, 595 N.W.2d 443 (Ct. App. 1999).

Pretrial confinement on a dismissed charge that is read in at sentencing relates to an offense for which the offender is ultimately sentenced, entitling the offender to sentence credit. *State v. Floyd*, 2000 WI 14, 232 Wis. 2d 767, 606 N.W.2d 155.

For sentence credit purposes, an offender's status constitutes custody whenever the offender is subject to an escape charge for leaving that status. *State v. Magnuson*, 2000 WI 19, 233 Wis. 2d 40, 606 N.W.2d 536.

*Buettcher* bars a claim for dual credit when the defendant has already received the same credit against a prior sentence that the defendant has already served. *State v. Jackson*, 2000 WI App 41, 233 Wis. 2d 231, 607 N.W.2d 338.

Department may not grant jail credit where it is not provided for by statute. 71 Atty. Gen. 102.

Sentence Credit: More Than Just Math, *White*, Wis. Law, Oct. 1991.

**973.16 Time out.** If an order or judgment releasing a prisoner on habeas corpus is reversed, the time during which the prisoner was at liberty thereunder shall not be counted as part of the prisoner's term.

History: 1993 a. 486.

**973.17 Judgment against a corporation or limited liability company.** (1) If a corporation or limited liability company fails to appear within the time required by the summons, the default of such corporation or limited liability company may be recorded and the charge against it taken as true, and judgment shall be rendered accordingly.

(2) Upon default of the defendant corporation or limited liability company or upon conviction, judgment for the amount of the fine shall be entered.

(3) A judgment against a corporation or limited liability company shall be collected in the same manner as in civil actions.

History: 1993 a. 112.

**973.18 Notice of rights to appeal and representation.** (1) In this section, "postconviction relief" and "sentencing" have the meanings ascribed in s. 809.30 (1).

(2) The trial judge shall personally inform the defendant at the time of sentencing of the right to seek postconviction relief and, if indigent, the right to the assistance of the state public defender.

(3) Before adjourning the sentencing proceeding, the judge shall direct the defendant and defendant's trial counsel to sign a form to be entered in the record, indicating that the lawyer has counseled the defendant regarding the decision to seek postconviction relief, and that the defendant understands that a notice of intent to pursue postconviction relief must be filed in the trial court within 20 days after sentencing for that right to be preserved.

(4) The judge shall direct the defendant's counsel to confer with the defendant before signing the form, during the proceeding

or as soon thereafter as practicable, and may make appropriate orders to allow the defendant to confer with counsel before being transferred to the state prison. The defendant shall be given a copy of the form.

(5) If the defendant desires to pursue postconviction relief, the defendant's trial counsel shall file the notice required by s. 809.30 (2) (b).

History: Sup. Ct. Order, 123 Wis. 2d xi (1985).

Judicial Council Note, 1984: Sub. (2) is similar to prior s. 809.30 (1) (b). Subs. (3) and (4) codify *State v. Argiz*, 101 Wis. 2d 546, 305 N.W. 2d 124 (1981). Sub. (5) codifies trial counsel's continuing duty to provide representation until appellate counsel is retained or appointed. *Whitmore v. State*, 56 Wis. 2d 706, 203 NW 2d 56 (1973). [Re order effective July 1, 1985]

**973.19 Motion to modify sentence.** (1) (a) A person sentenced to imprisonment or the intensive sanctions program or ordered to pay a fine who has not requested the preparation of transcripts under s. 809.30 (2) may, within 90 days after the sentence or order is entered, move the court to modify the sentence or the amount of the fine.

(b) A person who has requested transcripts under s. 809.30 (2) may move for modification of a sentence or fine under s. 809.30 (2) (h).

(2) Within 90 days after a motion under sub. (1) (a) is filed, the court shall enter an order either determining the motion or extending the time for doing so by not more than 90 days for cause.

(3) If an order determining a motion under sub. (1) (a) is not entered timely under sub. (2), the motion shall be considered denied and the clerk of the court shall immediately enter an order denying the motion.

(4) An appeal from an order determining a motion under sub. (1) (a) is governed by the procedure for civil appeals.

(5) By filing a motion under sub. (1) (a) the defendant waives his or her right to file an appeal or postconviction motion under s. 809.30 (2).

History: Sup. Ct. Order, 123 Wis. 2d xiv (1985); 1991 a. 39.

Judicial Council Note, 1984: This section is intended as an expeditious alternative to the procedure prescribed in s. 809.30 (2) when the only claim for postconviction relief relates to the severity of the sentence. It is not intended to alter the substantive grounds for such relief and it restores the time limits governing such motions prior to the 1978 revision of the appellate rules.

This section will probably be most frequently used in guilty plea cases, although it is not limited to such cases. However, if the defendant intends to withdraw a guilty plea or file other postconviction motions, s. 809.30 (2) or 974.06 provides the appropriate procedure. Motions under this section should usually be filed by trial counsel without the need for transcripts or for appointment of an appellate public defender. A defendant must elect between the remedies provided by this section and s. 809.30 (2). Filing a motion under this section waives relief under s. 809.30 (2). However, a defendant who has filed a notice of intent to pursue postconviction relief under s. 809.30 (2) (b) may invoke this remedy at any time before transcripts are ordered under s. 809.30 (2). If transcripts are required for prosecution of a motion under sub. (1) (a), they should be sought under SCR 71.03 (2).

Sub. (4) does not expand the scope of appellate review. [Re Order effective July 1, 1985.]

There are two alternative means to seek modification of a sentence: proceeding under (1) (a) or (b). Under either, a motion must be first made in the trial court. *State v. Norwood*, 161 Wis. 2d 676, 468 N.W.2d 741 (Ct. App. 1991).

**973.20 Restitution.** (1g) In this section:

(a) "Crime considered at sentencing" means any crime for which the defendant was convicted and any read-in crime.

(b) "Read-in crime" means any crime that is uncharged or that is dismissed as part of a plea agreement, that the defendant agrees to be considered by the court at the time of sentencing and that the court considers at the time of sentencing the defendant for the crime for which the defendant was convicted.

(1r) When imposing sentence or ordering probation for any crime for which the defendant was convicted, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing or, if the victim is deceased, to his or her estate, unless the court finds substantial reason not to do so and states the reason on the record. Restitution ordered under this section is a condition of probation, extended supervision or parole served by the defendant for a crime for which the defendant was convicted. After the termination of probation, extended supervision or parole, or if the defendant is

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not placed on probation, extended supervision or parole, restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order to receive restitution or enforced under ch. 785.

(2) If a crime considered at sentencing resulted in damage to or loss or destruction of property, the restitution order may require that the defendant:

(a) Return the property to the owner or owner's designee; or

(b) If return of the property under par. (a) is impossible, impractical or inadequate, pay the owner or owner's designee the reasonable repair or replacement cost or the greater of:

1. The value of the property on the date of its damage, loss or destruction; or

2. The value of the property on the date of sentencing, less the value of any part of the property returned, as of the date of its return. The value of retail merchandise shall be its retail value.

(3) If a crime considered at sentencing resulted in bodily injury, the restitution order may require that the defendant do one or more of the following:

(a) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care and treatment.

(b) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation.

(c) Reimburse the injured person for income lost as a result of a crime considered at sentencing.

(d) If the injured person's sole employment at the time of the injury was performing the duties of a homemaker, pay an amount sufficient to ensure that the duties are continued until the person is able to resume performance of the duties.

(4) If a crime considered at sentencing resulted in death, the restitution order may also require that the defendant pay an amount equal to the cost of necessary funeral and related services under s. 895.04 (5).

(4m) If the defendant violated s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.07 or 948.08 and sub. (3) (a) does not apply, the restitution order may require that the defendant pay an amount, not to exceed \$10,000, equal to the cost of necessary professional services relating to psychiatric and psychological care and treatment. The \$10,000 limit under this subsection does not apply to the amount of any restitution ordered under sub. (3) or (5) for the cost of necessary professional services relating to psychiatric and psychological care and treatment.

(5) In any case, the restitution order may require that the defendant do one or more of the following:

(a) Pay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.

(b) Pay an amount equal to the income lost, and reasonable out-of-pocket expenses incurred, by the person against whom a crime considered at sentencing was committed resulting from the filing of charges or cooperating in the investigation and prosecution of the crime. *See s. 973.05 (1) (b) for amount of award.*

(c) Reimburse any person or agency for amounts paid as rewards for information leading to the apprehension or successful prosecution of the defendant for a crime for which the defendant was convicted or to the apprehension or prosecution of the defendant for a read-in crime.

(d) If justice so requires, reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.

(6) Any order under sub. (5) (c) or (d) shall require that all restitution to victims under the order be paid before restitution to other persons.

(7) If the court orders that restitution be paid to more than one person, the court may direct the sequence in which payments are to be transferred under sub. (11) (a). If more than one defendant

is ordered to make payments to the same person, the court may apportion liability between the defendants or specify joint and several liability. If the court specifies that 2 or more defendants are jointly and severally liable, the department or the clerk to whom payments are made under sub. (11) (a) shall distribute any overpayments so that each defendant, as closely as possible, pays the same proportion of the ordered restitution.

(8) Restitution ordered under this section does not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action. The facts that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action. Any restitution made by payment or community service shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

(9) (a) If a crime victim is paid an award under ch. 949 for any loss arising out of a criminal act, the state is subrogated to the rights of the victim to any restitution required by the court. The rights of the state are subordinate to the claims of victims who have suffered a loss arising out of the offenses or any transaction which is part of the same continuous scheme of criminal activity.

(b) When restitution is ordered, the court shall inquire to see if an award has been made under ch. 949 and if the department of justice is subrogated to the cause of action under s. 949.15. If the restitution ordered is less than or equal to the award under ch. 949, the restitution shall be paid only to the general fund. If the restitution ordered is greater than the award under ch. 949, the general fund shall receive an amount equal to the award under ch. 949 and the balance shall be paid to the victim.

(10) The court may require that restitution be paid immediately, within a specified period or in specified installments. If the defendant is placed on probation or sentenced to imprisonment, the end of a specified period shall not be later than the end of any period of probation, extended supervision or parole. If the defendant is sentenced to the intensive sanctions program, the end of a specified period shall not be later than the end of the sentence under s. 973.032 (3) (a).

(11) (a) Except as otherwise provided in this paragraph, the restitution order shall require the defendant to deliver the amount of money or property due as restitution to the department for transfer to the victim or other person to be compensated by a restitution order under this section. If the defendant is not placed on probation or sentenced to prison, the court may order that restitution be paid to the clerk of court for transfer to the appropriate person. The court shall require the defendant to pay a surcharge equal to 5% of the total amount of any restitution, costs and attorney fees and any fines and related payments ordered under s. 973.05 (1) to the department or clerk of court for administrative expenses under this section.

(b) The department shall establish a separate account for each person in its custody or under its supervision ordered to make restitution for the collection and disbursement of funds. A portion of each payment constitutes the surcharge for administrative expenses under par. (a).

(12) (a) If the court orders restitution in addition to the payment of fines, related payments under s. 973.05 and costs under s. 973.06, it shall set the amount of fines, related payments and costs in conjunction with the amount of restitution and issue a single order, signed by the judge, covering all of the payments. If the costs for legal representation by a private attorney appointed under s. 977.08 are not established at the time of issuance of the order, the court may revise the order to include those costs at a later time.

(b) Except as provided in par. (c), payments shall be applied first to satisfy the ordered restitution in full, then to pay any fines or related payments under s. 973.05, then to pay costs other than



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LRB-3946/8

MGD:...

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

FRIDAY

Gen

1 AN ACT ...; relating to: the rights of adult children of crime victims.

*Analysis by the Legislative Reference Bureau*

Under current law, a victim of a crime has a variety of rights, including the right to notice of court proceedings, the right to make a statement in connection with a sentencing, dispositional, or parole hearing, and the right to restitution. Family members also have those rights if the victim is deceased or is physically or emotionally unable to exercise his or her own rights as a victim. Current law defines "family member" to include a spouse, child, sibling, parent, or legal guardian, but in this context, "child" does not include a person who is 18 or older. Thus, adult children of a deceased victim or of a victim who is otherwise unable to exercise his or her own rights do not have rights as crime victims.

This bill amends the definition of "family member" so that it includes adult children. Under the bill, an adult child would have the same rights as a minor child in cases in which the victim is deceased or is otherwise unable to exercise his or her own rights.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 950.02 (1) of the statutes is amended to read:

3 950.02 (1) ~~Child~~ Except in sub. (3), "child" means a person who is less than  
4 18 years of age.

1           ✓  
SECTION 2. 950.02 (3) of the statutes is amended to read:

2           950.02 (3) "Family member" means spouse, minor child, adult child, sibling,  
3           parent, or legal guardian.

4           History: 1979 c. 219; 1983 a. 197; 1985 a. 311; 1995 a. 77, 310; 1997 a. 35, 181; 1999 a. 32.

(END)

**Emery, Lynn**

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**From:** Christopher, Marc  
**Sent:** Friday, February 27, 2004 8:48 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-3946/1 Topic: Rights of adult children of crime victims

It has been requested by <Christopher, Marc> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3946/1 Topic: Rights of adult children of crime victims